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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/164,793	10/01/98	WATT	F JJM-381

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QM31/0813

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EXAMINER

JACKSON, G

ART UNIT	PAPER NUMBER
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3731

DATE MAILED: 08/13/01

**Please find below and/or attached an Office communication concerning this application or proceeding.**

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

Paper No. 16

Application Number: 09/164,793  
Filing Date: October 01, 1998  
Appellant(s): WATT ET AL.

Theodore J. Shatynski  
For Appellant

EXAMINER'S ANSWER

This is in response to appellants brief on appeal filed May 22, 2001.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

The amendment after final rejection filed on April 22, 2001 has not been entered. The examiner respectfully disagree with appellant that the status of the amendment after final has not

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been address. The Advisory Action mailed on March 27, 2001, indication is clearly marked in 3(a).

**(5) *Summary of Invention***

The summary of invention contained in the brief is deficient because the recitation "uniform composition and construction" is not supported in the specification neither has such recitation been considered as a limitation of claim 1. (See advisory action, mailed March 27, 2001).

**(6) *Issues***

The appellant's statement of the issues in the brief is correct.

**(7) *Grouping of Claims***

The appellant's statement in the brief that certain claims do not stand or fall together is not agreed with because Group II and III do not add patentable distinguishable features to Group I invention. When Group I is meet clearly Groups II and III are meet since the purpose is a well-known concept in the surgical stapling art. Group III do not add any patentable distinguishable feature to Groups I and II.

For these reasons, the examiner believes the claims stand or fall together.

**(8) *Claims Appealed***

Claims 1 and 18 appear on pages 10 and 12 contain(s) substantial errors as presented in the Appendix to the brief. Accordingly, claims 1 and 18 correctly written in the Appendix to the examiner's answer.

**(9) *Prior Art of Record***

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3,157,524	ARTANDI	11-1964
5,660,857	HAYNES et al	8-1997
5,843,096	IGAKI et al	12-1998

**(10) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-25 are rejected under 35 U.S.C. 103. This rejection is set forth in prior Office Action, Paper No. 11.

**(11) Response to Argument**

The appellants' argument has been considered, however the examiner respectfully disagrees. Particularly the arguments on page 7, in the penultimate paragraph; the examiner contend that Igaki et al indeed discloses a tubular member in figure 1. The manner in how the tube is formed is not an issue herein. In other words, the recitation "uniform composition and construction" has not been given patentable weight. The definition of "tubular" takes on many examples, including sock clothing and toothpaste. The examiner believes that figure 1 of the reference fit within Webster's Ninth New Collegiate Dictionary teachings. Even if the "uniform composition and construction" recitation is given patentable weight, it would have been obvious to one having ordinary skill in the art to form Igaki's device of uniform construction. Artandi clearly suggest the use of sponges having tubular shape (column 2, line 68). Haynes et al also teach sponges adapted to be used for hemostasis purposes. Artandi and Haynes combination clearly suggest biopolymer sponges and it would have been within the purview of one having ordinary skill to form Igaki's device of biopolymer sponge.

For the above reasons, it is believed that the rejections should be sustained.

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Respectfully submitted,

Gary Jackson  
Primary Examiner  
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GJ  
August 9, 2001

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## **APPENDIX OF CLAIMS ON APPEAL**

### **CORRECTED CLAIMS ON APPEALS:**

Claim 1. A biopolymer sponge tube which is closed at one end.

Claim 18. A method for stapling mammalian tissue comprising the steps of:

placing the tissue between a staple cartridge and anvil in a surgical stapler;

fitting a closed-end biopolymer sponge tube over the staple cartridge and /or over the anvil; and

firing at least one staple from the staple from the staple cartridge through the biopolymer sponge tube and through the tissue to thereby attach the biopolymer sponge to the tissue.